

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Numbering Resource Optimization

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CC Docket No. 99-200

**COMMENTS OF
T-MOBILE USA, INC.**

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SUMMARY

T-Mobile USA, Inc. ("T-Mobile") welcomes the decision by the California Public Utilities Commission ("CPUC") to address the critical need for area code relief in California, particularly in the 310 and 909 Numbering Plan Areas ("NPAs"). Immediate implementation of all-services overlays is necessary to ensure that numbers are available to consumers and the carriers who serve them because area code relief is long overdue in the 310 and 909 area codes. Moreover, the costs associated with the transitional specialized overlays ("SOs") that the CPUC proposes would outweigh any potential benefits to be gained by implementing them. Therefore, the SOs should not be implemented as currently proposed in the CPUC Petition.

The benefits of the proposed SOs could only outweigh the costs if the following conditions are met: (1) no number take-backs or mandatory area code changes; (2) expiration of the waiver of mandatory ten-digit dialing requirement on November 24, 2003 or upon exhaust of any of the underlying NPAs, whichever is sooner; (3) transition of the SO to an all-services overlay on November 24, 2003 or upon exhaust of any of the underlying NPAs, whichever is sooner; and (4) no rationing of numbering resources. Accordingly, the SOs should be implemented only if the Federal Communications Commission ("FCC") conditions grant of authority to implement the SOs upon compliance with these requirements.

In granting the CPUC Petition subject to the conditions that T-Mobile proposes, the FCC should reemphasize that SOs are no substitute for timely implementation of area code relief in the form of an all services overlay or geographic split. The FCC should also make an explicit finding that the modified SOs are necessary here to ensure that adequate numbering resources are available for all service providers because area code relief is long overdue in the 310 and 909 area codes.

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)¹ submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) October 24, 2002 public notice requesting comment on the California Public Utilities Commission’s (“CPUC”) petition seeking delegated authority to implement two expanded transitional specialized overlays (“SOs”) to provide relief for the 310/323/213/562 area codes and the 909/714/949 area codes.²

T-Mobile welcomes the CPUC’s decision to address the critical need for area code relief in California, particularly in the 310 and 909 NPAs. Indeed, the SOs that the CPUC now proposes contain many of the features that T-Mobile and other carriers recommended to the FCC in late 2000 in order to speed the implementation of efficient area code relief in areas where relief was urgently needed prior to CMRS providers’ entrance to thousand block number pooling

¹ T-Mobile USA, Inc. (formerly known as VoiceStream Wireless Corporation), combined with Powertel, Inc., is the sixth largest national wireless provider in the U.S. with licenses covering approximately 94 percent of the U.S. population and currently serving over eight million customers. T-Mobile and Powertel, Inc. are wholly owned subsidiaries of Deutsche Telekom, AG and are part of its T-Mobile wireless division. Both T-Mobile and Powertel are, however, operated together and are referred to in these comments as “T-Mobile.”

² Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment at 4-6 (filed September 27, 2002) (“*CPUC Petition*”).

and local number portability³. T-Mobile continues to support case-by-case consideration, in conjunction with the FCC's eight specific criteria, of opportunities to use SOs to ensure that all carriers have access to the numbering resources they need to provide the services they seek to offer.⁴ In establishing this course of action in the *Third Report and Order*, the FCC took deliberate care to state its view that SOs are one of several available number resource optimization measures, and therefore, as any other measure, must be subject to weighing the costs of the SO against the conservation benefits to be realized. In the case of the SO, the FCC set eight specific criteria. T-Mobile asserts that in order for the CPUC petition to meet this significant threshold, the following modifications are necessary to achieve the intended goals of the FCC and the CPUC.

The most important of the necessary modifications is that there should be no take-backs or "area code changes" of numbers, because the resulting costs would far outweigh any potential benefits to be gained by implementing the SOs. If the SOs could be implemented without requiring existing subscribers to change the area code of their numbers, the benefits of the SOs could potentially outweigh the costs. However, beyond no take-backs, further additional modifications are necessary in order to maximize the benefits of the SOs and achieve the goals of the FCC and the CPUC. Specifically, the transition period should be shortened to coincide with the implementation of wireless local number portability ("LNP"), number rationing should be eliminated, and ten-digit dialing should be mandated for all calls. Without these modifications,

³ Letter from Judith St. Ledger-Roty and Todd Daubert, Kelley, Drye & Warren, LLP, to Magalie Roman Salas, Secretary, FCC, dated November 15, 2000 (joint filing on behalf of PCIA, AT&T Wireless, Nextel, Verizon Wireless Messaging Services and VoiceStream Wireless).

⁴ See *Numbering Resource Optimization*, 17 FCC Rcd 252, 282-94, ¶¶ 78-81 (2001) ("*Third Report and Order*").

the SOs should not be implemented because their potential benefits would not outweigh the costs of implementing the SOs as currently proposed.

In sum, T-Mobile believes that the benefits of the proposed SOs could only outweigh the costs if the following conditions are met: (1) no number take-backs or mandatory area code changes; (2) expiration of the waiver of mandatory ten-digit dialing requirement on November 24, 2003 or upon exhaust of any of the underlying NPAs, whichever is sooner; (3) transition of the SO to an all-services overlay on November 24, 2003 or upon exhaust of any of the underlying NPAs, whichever is sooner; and (4) no rationing of numbering resources. In granting the CPUC petition subject to these conditions, however, the FCC should reemphasize that SOs are no substitute for timely implementation of area code relief in the form of an all services overlay or geographic split. The FCC should also make an explicit finding that the modified SOs are necessary here to ensure that adequate numbering resources are available for all service providers because area code relief is long overdue in the 310 and 909 area codes.

I. THE FCC SHOULD CONDITION GRANT OF THE PETITION TO ENSURE THAT BENEFITS ARE MAXIMIZED AND COSTS ARE MINIMIZED

The numbering utilization measures that the FCC has implemented in recent years have, in large part, successfully increased the efficiency with which numbering resources are utilized and ensured that adequate numbering resources are available to all service providers. A principal reason for this success is that the FCC carefully weighed the costs of each proposal against its potential benefits before deciding whether it should be adopted. The cost/benefit analysis is crucial because the goal of the Telecommunications Act of 1996 (the "Act"), and thus the goal of the FCC, is to foster competition, not to conserve numbers at all costs. In order to

foster competition, entry barriers must be lowered and adequate numbering resources must be available to all service providers. Thus, the need to improve the efficiency with which numbers are utilized must be balanced against the need to reduce the costs associated with numbering administration and to ensure that adequate numbering resources are available to all service providers.

The FCC performed a cost-benefit analysis in the *Third Report and Order* when it concluded that it would consider requests by State commissions for delegated authority to implement SOs on a case-by-case basis and established eight criteria that State commissions should address when requesting authority to implement an SO.⁵ These factors reflect the FCC's cost-benefit analysis, and the FCC emphasized that "states seeking to implement an SO must also demonstrate that the benefits will outweigh the costs of implementing the SO" by addressing these factors.⁶

The CPUC rightly addressed the relevant criteria in its petition, and T-Mobile agrees with the CPUC's conclusions with respect to several of the criteria. For example, T-Mobile supports the CPUC's proposal to include "transparent" or "non-geographic" type numbers and wireless numbers in the SOs.⁷ This aspect of the proposal would help to ensure that adequate numbering resources are available to all service providers without unduly increasing costs. For the same reasons, T-Mobile supports the CPUC's proposals to implement one SO

⁵ See *Numbering Resource Optimization*, 17 FCC Rcd 252, 282-94, ¶¶ 67-94 (2001) ("*Third Report and Order*").

⁶ *Id.* at 288, ¶ 80.

⁷ *CPUC Petition* at 2-4.

over the 310/323/213/562 area codes and the other over the 909/714/949 area codes,⁸ and to establish a number pool in the SO immediately upon its implementation.⁹ The best way to improve the efficiency with which numbering resources are utilized is to ensure that the new NPAs can be used by the largest number of carriers over the largest geographic area possible. By implementing an SO over multiple area codes and by immediately establishing the associated number pools, the proposals can potentially help to improve number utilization efficiency without unduly increasing costs to consumers or service providers.

However, the CPUC's proposed waiver of the mandatory ten-digit dialing requirement, whether permanent or temporary, would have no effect whatsoever on the efficiency with which numbering resources are utilized.¹⁰ In fact, as the FCC has repeatedly found, the mandatory ten-digit dialing requirement "maximize[s] numbering resource optimization"¹¹ and "minimizes anti-competitive effects due to dialing disparities, which, in turn avoids customer confusion."¹² Nevertheless, T-Mobile acknowledges that a temporary waiver of the mandatory ten-digit dialing requirement would shorten the time needed to implement the SOs, which is crucial given the lack of adequate numbering resources in some of the NPAs. For this sole reason, T-Mobile supports a temporary waiver of the mandatory ten-digit dialing requirement.

⁸ *Id.* at 4-6. T-Mobile also welcomes the CPUC's proposal "that the rate centers for the SO would match the rate centers for each of the underlying area codes." *Id.* at 5.

⁹ *Id.* at 13-14.

¹⁰ *Third Report and Order* at 293, ¶ 92.

¹¹ *Id.*

¹² *Id.*

With respect to the remaining criteria, T-Mobile believes that certain aspects of the proposed SO should be modified in ways that increase the benefits of the SOs while decreasing the costs associated with the SOs. Indeed, unless the FCC requires the modifications that T-Mobile proposes here, the benefits of the SOs will not outweigh the associated costs, and thus the SOs should not be implemented.

II. THE COSTS ASSOCIATED WITH AREA CODE CHANGES WOULD FAR OUTWEIGH THE BENEFITS THAT COULD BE GAINED FROM AN SO

The FCC does not favor number take-backs as a matter of policy, and has stated that it “would likely oppose technology-specific overlays that would include take-backs of numbers that are geographically sensitive.”¹³ The FCC bases its policy on the fact that “take-backs result in significant cost and inconvenience to those customers and their service providers that are required to relinquish their existing numbers and use numbering resources in the SO” because, among other things, these service providers “must reprogram their equipment and change their customers’ phone numbers.”¹⁴ With respect to wireless services, the FCC explained that “the costs would be particularly significant due to the large and rapidly growing number of wireless subscribers, particularly in major markets.”¹⁵ Accordingly, the FCC requires state commissions to include a “strong showing that the consumer and industry costs associated with take-backs are outweighed by the optimization benefits of the take-backs.”¹⁶ Specifically, a state

¹³ *Third Report and Order* at 292, ¶ 90.

¹⁴ *Id.* at 291, ¶ 88.

¹⁵ *Id.*

¹⁶ *Id.* at 292, ¶ 90.

commission seeking to impose a take-back must “specifically demonstrate that the negative effects of the take-backs will be mitigated by the benefits in the particular area”¹⁷

The CPUC proposes “to move from the 310 and 909 NPAs to the respective SO all existing customers of wireless providers, except for customers of paging companies.”¹⁸ Rather than making a “strong showing that the consumer and industry costs associated with [the proposed move] are outweighed by the optimization benefits of the [move],” the CPUC contends that the proposed move is not a “take-back” because it “would necessitate a change of area code only for existing wireless customers.”¹⁹

T-Mobile respectfully submits that it should be irrelevant whether the proposed move is properly labeled a “take-back.” The FCC’s decision to grant or deny the CPUC Petition should have no effect whatsoever on the ability of states to implement area code relief in the form of a geographic split. The sole focus instead should be on whether the costs associated with the CPUC’s proposed move are outweighed by the optimization benefits of the move.

A. The Costs And Inconveniences Associated With The Proposed Area Code Move Would Be Significant.

T-Mobile recognizes that the proposed move may make it easier for consumers to remember the changes to their phone number than a traditional take-back, because the consumer would only have to remember three new digits rather than ten new digits. However, the proposed move would not reduce any of the other significant inconveniences and costs associated with number take-backs. As with any number take-back, the proposed move would

¹⁷ *Id.*

¹⁸ *CPUC Petition* at 7.

¹⁹ *Id.*

impose substantial burdens on consumers associated with (1) reprinting stationary and business cards with the new area code, (2) updating advertising to reflect the new area code, (3) reprogramming telephone automatic dialing systems, and other equipment, to incorporate the new area code, (4) notifying others of the changed area code, and (5) increased confusion and difficulty in completing calls to parties whose area codes have not changed.²⁰ As such, the proposed move is not substantially less burdensome or costly for consumers than traditional number take-backs.

The same is true with respect to the burdens and costs that wireless carriers would incur under the proposed move. Specifically, the process that a wireless carrier would have to follow to implement the proposed move are identical for all practical purposes to those necessary to implement a number take-back. For example, T-Mobile would have to take the following time consuming and expensive steps in order to implement the proposed move:

Provide Customer Notification: T-Mobile would begin the process of implementing the proposed move by notifying each of its customers via United States Mail or via a telephone call.

Update Back Office Systems: T-Mobile would have to update its Back Office Systems, including its billing and provisioning systems, to reflect the new telephone number of each customer.

Update the Adjunct Location Register (“ALR”) and the Home Location Register (“HLR”): T-Mobile would have to update the ALR within the T-Mobile Network, and the ALR would then identify and update the HLR associated with each customer.

Update the VoiceMail Box of Each Subscriber: T-Mobile would have to do a manual modification to change the telephone number on each customer in order not to lose any of the messages contained in their VoiceMail Box.

²⁰ See, e.g., *Numbering Resource Optimization*, 16 FCC Rcd 306, ¶63 & n.162 (2000) (“*Second Report and Order*”).

Update the Handset of each Subscriber: T-Mobile would have to update the telephone number in the handset of each subscriber utilizing Over The Air Activation (“OTA”). When this OTA transaction is complete, a message is sent to the handset notifying the customer that the number has been changed.

In addition to being time consuming and costly, this proposed move would place T-Mobile and other wireless carriers at a distinct competitive disadvantage because only wireless customers would suffer the cost and inconvenience of going through the reprogramming and notification process described above.²¹ The combination of the very significant burdens in terms of cost, time and inconvenience coupled with the disproportionate impact of these burdens on wireless carriers sets a very high hurdle for the benefits to exceed. In this case, the benefits that could potentially be gained by implementing the proposed move do not surpass these hurdles, as explained in the following section.

B. The Potential Benefits Associated With The Proposed Area Code Move Could Not Outweigh The Associated Costs And Inconveniences.

The CPUC proposed the area code move in order to gain 149 NXX codes for wireline carriers in the 310 area code (which represents the amount of wireless NXX codes that would be “moved” to the new SO covering the 310, 213, 323 and 562 NPAs) and 172 NXX codes in the 909 area code (which represents the amount of wireless NXX codes that would be “moved” to the new SO covering the 909, 714 and 949 NPAs).²² In essence, the proposed area code move merely represents a “one for one” swap of NXXs from an existing area code (the 310 or the 909) to an overlay area code (the respective SO). As such, the proposed area code move

²¹ Cf. *id.* at ¶ 124, citing *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois*, 10 FCC Rcd 4596, 4605, 4607-09, 4610-12, ¶¶ 21-36 (1995) (discussing reasons why the Commission has traditionally disfavored wireless only number take-backs).

²² CPUC Petition at 3-4.

would have no effect whatsoever on the efficiency with which numbers are used or administered, and the only numbering resources gained would be due to the implementation of new area codes (the two new SOs).

Because the proposed area code would not create additional numbering resources, the only difference between an all services overlay (or an SO without the proposed area code move) and an SO with the proposed area code move is that the reclaimed NXX codes in 310 and 909 would be taken back from wireless customers and made available solely to wireline customers. This is discriminatory and fundamentally inconsistent with the Act, as the Commission has repeatedly found. Moreover, the CPUC has made no demonstration that: “(1) consumers, particularly subscribers that would be required to relinquish their telephone numbers, support such a measure; (2) the state will provide incentives for providers and their current customers to relinquish their numbers in the underlying area code; and (3) a phased-in approach will help ease the cost burden on customers and service providers.”²³

Every permissible benefit that the CPUC has demonstrated is due to the proposed area code move and not the implementation of area code relief in the form of an SO. Under these circumstances, the benefits to be gained by implementing the proposed area code move could not outweigh the discriminatory and anti-competitive costs associated with the move.

²³ *Numbering Resource Optimization*, 17 FCC Rcd 252, ¶90 (2001).

III. THE PROPOSED SO COULD NOT BE IMPLEMENTED PRIOR TO THE EXHAUST OF THE 310 AND 909 AREA CODES AND THE IMPLEMENTATION OF WIRELESS LOCAL NUMBER PORTABILITY

California should be commended for its efforts and diligent application of number resource conservation measures. The CPUC has done reclamation, scrutinized code assignments, and implemented thousands-block pooling in almost all of its NPAs. Nonetheless, there can be no doubt that the 310 and 909 area codes will exhaust before the proposed area code move could be completed. Based upon the latest data, including the wireless thousands-block pooling forecasts and donations, the NANPA November Report to the North American Numbering Council²⁴ updated the exhaust date for the 310 and 909 area codes to second quarter of 2003. Implementation of the proposed area code move will take between twelve and eighteen months to complete.²⁵ Therefore, no numbering resources will be available in the 310 and 909 area codes for a significant period of time. Consequently, for the 310 and 909 area codes, the time has come to provide timely area code relief for all telecommunications carriers.

The FCC astutely noted that SOs should not be implemented when the underlying NPA has a projected life span of less than one year. Thus, the FCC should not permit the proposed SOs because the 310 and 909 area codes will exhaust long before these SOs could be implemented. If the 310 and 909 area codes exhaust before the SOs could be completed, then no numbering resources would be available for assignment in those areas. This result, even on a

²⁴ Report of the North American Numbering Plan Administrator Status of Active and Pending NPA Relief Projects (revised November 21, 2002)("NANPA November Report").

²⁵ 1998 NANC Numbering Resource Optimization Report (NANC Report), § 14.3 (explaining that the implementation timeline for a geographic split, which the CPUC has compared to the proposed area code move, takes from 12 to 18 months and includes "network and system modifications, customer education, permissive dialing and intercept announcements.").

temporary basis, is unacceptable and fundamentally inconsistent with the Act. As the FCC has explained,

The ready availability, and use, of numbering resources by communications services providers is essential if the public is to receive the communications services it wants and needs. The timely availability of numbers is essential if new providers are to enter and new services are to appear in the telecommunications marketplace. For example, new wireless service providers . . . cannot offer service without adequate access to new telephone numbers. Unavailability of numbers, or an unreasonable allocation of available numbers, could prevent or discourage consumers from taking services.²⁶

Accordingly, no numbering optimization measure that potentially could lead to a situation in which either wireline carriers or wireless carriers have no access to numbering resources should be permitted, or even seriously considered. This is particularly true under today's economic conditions, which could magnify the financial harm caused by the unavailability of numbering resources.

Moreover, as a practical matter, T-Mobile believes that SOs cannot coexist with the implementation of wireless LNP on November 24, 2003. As of that date, subscribers will be able to port numbers between wireless service providers and wireline service providers, and the distinction upon which the SOs are based would no longer be valid. Thus, the grounds for maintaining the SOs would no longer exist.

²⁶ Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois, 10 FCC Rcd 4596, ¶ 19 (1995).

**IV. GRANT OF THE PETITION SHOULD ALSO BE CONDITIONED ON THE
ELIMINATION OF CODE RATIONING**

Grant of the petition should be conditioned on the elimination of code rationing. In its petition, the CPUC explains that number “rationing likely would not need to continue in the underlying NPAs once the SO is implemented, nor would rationing be established in the SO.”²⁷ T-Mobile appreciates the recognition by the CPUC that number rationing would no longer be necessary once the SOs are implemented. However, given the extremely detrimental effects of number rationing, T-Mobile asks the FCC explicitly to condition grant of the CPUC Petition on the elimination of number rationing, both in the SO and in the underlying NPAs, immediately upon implementation of the SOs. As the FCC has explained,

[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources. For consumers to benefit from the competition envisioned by the 1996 Act, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible.²⁸

Moreover, “rationing and other restrictions on access to numbers poses an insidious threat to competition, as it can cause carriers to move their business to where numbers are more readily available, robbing consumers of competitive choices.”²⁹ For these reasons, the FCC has repeatedly emphasized that states may not use rationing as an alternative for timely area code relief.³⁰ Therefore, there can be no justification for allowing rationing to continue once the SOs have been implemented.

²⁷ CPUC Petition at 13.

²⁸ See *Second Report and Order* at ¶ 61.

²⁹ See *id.* at ¶ 59.

³⁰ See *id.* at ¶ 8.

V. **CONCLUSION**

For the foregoing reasons, the proposed SOs do not meet the FCC requirement that the benefits of the SOs outweigh their cost. With the advent of wireless LNP on November 24, 2003 and the imminent exhaust of the 310 and 909 area codes, there is insufficient time to implement the proposed SOs. Nonetheless, if the FCC does consider granting the CPUC Petition, the SOs should be subject to the following conditions: (1) no number take-backs or mandatory area code changes; (2) expiration of the waiver of mandatory ten-digit dialing requirement on November 24, 2003 or upon exhaust of any of the underlying NPAs, whichever is sooner; (3) transition of the SO to an all-services overlay on November 24, 2003 or upon exhaust of any of the underlying NPAs, whichever is sooner; and (4) no rationing of numbering resources.

Respectfully submitted,

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